

UNITED STATES DISTRICT COURT
for the

Western District of North Carolina

United States of America)	
v.)	
Antonio Sinclair)	Case No: <u>3:01CR31-9</u>
)	USM No: <u>16624-058</u>
Date of Previous Judgment: <u>12/10/01</u>)	<u>Claire Rauscher</u>
(Use Date of Last Amended Judgment if Applicable))	Defendant's Attorney

Order Regarding Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2)

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons ☐ the court under 18 U.S.C. § 3582(c)(2) for a reduction in the term of imprisonment imposed based on a guideline sentencing range that has subsequently been lowered and made retroactive by the United States Sentencing Commission pursuant to 28 U.S.C. § 994(u), and having considered such motion,

IT IS ORDERED that the motion is:

☒ **DENIED.** ☐ **GRANTED** and the defendant's previously imposed sentence of imprisonment (as reflected in the last judgment issued) of _____ months **is reduced to** _____.

I. COURT DETERMINATION OF GUIDELINE RANGE (Prior to Any Departures)

Previous Offense Level: <u>35</u>	Amended Offense Level: <u>33</u>
Criminal History Category: <u>III</u>	Criminal History Category: <u>III</u>
Previous Guideline Range: <u>210</u> to <u>262</u> months	Amended Guideline Range: <u>168</u> to <u>210</u> months

II. SENTENCE RELATIVE TO AMENDED GUIDELINE RANGE

- ☐ The reduced sentence is within the amended guideline range.
- ☐ The previous term of imprisonment imposed was less than the guideline range applicable to the defendant at the time of sentencing as a result of a departure or Rule 35 reduction, and the reduced sentence is comparably less than the amended guideline range.
- ☒ **Other (explain):** On 12/10/01, the defendant was sentenced to 120 months confinement which was 57% of the low end of the original guideline range for imprisonment. The defendant was originally sentenced after receiving a downward departure motion pursuant to USSG §5K1.1 but not 18 U.S.C. § 3553(e). As such, although the defendant is eligible for a retroactive crack cocaine reduction, he cannot be sentenced below the mandatory minimum sentence of 120 months, and therefore, his sentence cannot be reduced.


III. ADDITIONAL COMMENTS

Except as provided above, all provisions of the judgment dated 12/10/01 shall remain in effect.

IT IS SO ORDERED.

Order Date: June 3, 2009

Effective Date: _____
(if different from order date)



Frank D. Whitney
United States District Judge

